

## Message Text

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ACTION EA-13

INFO OCT-01 SS-14 ISO-00 PM-03 L-02 H-01 SP-01 EB-03

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FM AMEMBASSY MANILA

TO SECSTATE WASHDC 2622

S E C R E T MANILA 4188

LIMDIS

E.O. 11652: GDS

TAGS: EGEN, ETRD, US, RP

SUBJECT: GOP CONCEPTS--RETAIL TRADE, BOARDS OF DIRECTORS AND  
EMPLOYMENT OF FOREIGN NATIONALS

REF: MANILA 4108

SUMMARY: EMBASSY RECEIVES GOP CONCEPTS TO BE CONTAINED IN  
PRESIDENTIAL DECREE ON RETAIL TRADE AND REPRESENTATION ON  
BOARDS OF DIRECTORS AND EMPLOYMENT OF FOREIGN NATIONALS.  
DRAFT POLICY STATEMENT ON LAND NOT SATISFACTORY AND EMBASSY  
ATTEMPTING CLARIFICATION AND TO OBTAIN INFO FROM GOP  
ON CONCEPTS FOR DECREE ON SERVICE CONTRACTS RELATING  
TO USE OF PUBLIC LAND. END SUMMARY.

1. INFORMATION WHICH EMBASSY OUTLINED IN REF WAS  
INFORMALLY DELIVERED TO EMBASSY BY SEC ROMULO'S OFFICE.  
INFO INCLUDED CONCEPTS WHICH THE GOP WOULD INCORPORATE  
IN A PRESIDENTIAL DECREE ON RETAIL TRADE AND REPRESENTATION  
ON BOARD OF DIRECTORS AND EMPLOYMENT OF FOREIGN  
NATIONALS. FIRST DECREE WOULD AMEND THE RETAIL TRADE  
LAW WHILE THE LATTER WOULD AMEND THE ANTI-DUMMY LAW.

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2. RETAIL TRADE: FOLLOWING IS TEXT OF GOP CONCEPTS:

QUOTE: IN GENERAL, RETAIL IS DEFINED AS THE SALE OF A FINAL PRODUCT IN SMALL QUANTITIES TO A FINAL CONSUMER. PROBLEMS HAVE ARISEN IN THE IMPLEMENTATION OF THE RETAIL TRADE FILIPINIZATION LAW SINCE THE DEFINITION ADOPTED IN THIS LAW IS THE TAX DEFINITION OF RETAIL TRADE. SEVERAL COURT CASES HAVE BEEN FILED AND THE LOWER COURTS HAVE VARYING INTERPRETATIONS OF THE SCOPE OF RETAIL TRADE. THE CASES ARE NOW IN THE SUPREME COURT AWAITING RESOLUTION. EVEN IF THE COURTS INTERPRET R.A. 1180 THEY WILL BE HANDICAPPED BY THE ORIGINAL DEFINITION IN LAW. IN ORDER TO SET THE RIGHT DEFINITION I AM ISSUING A DECREE TO ADOPT A NEW DEFINITION OF RETAIL TRADE. THIS FOLLOWS BASICALLY THE INTERNATIONAL DEFINITION YET IT PRESERVES OUR NATIONALISTIC OBJECTIVE OF KEEPING PURELY THE RETAIL TRADE TO FILIPINOS. THIS DECREE WILL NOT ALSO ALTER THE PREVIOUS PRIVILEGE GIVEN TO ALIEN INDIVIDUALS WHO WERE RETAILING IN 1954. AS PROVIDED IN THIS LAW, R.A. 1180, THEY SHALL HAVE THE PRIVILEGE OF ENGAGING IN RETAIL BUSINESS FOR AS LONG AS THEY LIVE.

IN VIEW OF THE NECESSITY OF PUTTING PHILIPPINE TRADE PRACTICES ON A SOUND BASIS I HEREBY EXEMPT BULT SALES, SALES BETWEEN ONE INDUSTRY TO ANOTHER, INDENT SALES FROM THE PURVIEW OF RETAIL SALES. FURTHERMORE, SERVICES, RESTAURANT SALES, WHETHER IN INDEPENDENT ESTABLISHMENT OR IN HOTELS OR INNS, SHALL NOT BE COVERED ALSO BY THE PROVISIONS OF THE RETAIL TRADE LAW. UNQUOTE.

3. REPRESENTATION ON BOARDS OF DIRECTORS AND EMPLOYMENT OF FOREIGN NATIONALS. FOLLOWING IS TEXT OF GOP CONCEPTS:

QUOTE: IN LINE WITH THE PHILIPPINE POLICY TO GIVE FORIEGN INVESTORS FAIR AND EQUITABLE TREATMENT, FOREIGN INVESTORS CAN BE PROPORTIONATELY REPRESENTED IN THE BOARD OF DIRECTORS OF A CORPORATION TO THE EXTENT OF THEIR COMMON EQUITY PARTICIPATION UNLESS SPECIFIC LAWS GOVERN THE NUMBER OF DIRECTORS WHO SHOULD BE FILIPINOS, FOR EXAMPLE IN BANK BOARD OF DIRECTORS. USUALLY, IT IS THE PRACTICE IN MANY CORPORATIONS TO HAVE AN EXECUTIVE COMMITTEE OF THE BOARD OF DIRECTORS. IN FORMING SUCH EXECUTIVE COMMITTEE OF THE BOARD OF DIRECTORS THE PROPORTIONS OF EQUITY OWNERSHIP AND NATIONALITIES OF DIRECTORS

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SHOULD BE PRESERVED.

IN ACCORDANCE WITH THE NATIONAL POLICY TO DEVELOP MANAGERIAL, SUPERVISORY AND TECHNICAL TALENT, FOREIGN NATIONALS SHALL ALSO BE ALLOWED TO BE EMPLOYED SUBJECT TO THE PROVISIONS OF THE IMMIGRATION ACT AND THE PROVISIONS OF THE INVESTMENT INCENTIVES ACT. UNDER THE INVESTMENT INCENTIVES ACT, EMPLOYMENT OF FOREIGN NATIONALS CARRY THE CONCOMITANT OBLIGATION TO TRAIN

UNDERSTUDIES.

I WISH TO EMPHASIZE HOWEVER THAT NO ATTEMPT TO PLACE DUMMIES JUST TO QUALIFY UNDER THE CONSTITUTION LAWS SHOULD BE MADE. ANYBODY CAUGHT VIOLATING THE ANTI-DUMMY SHALL BE PUNISHED ACCORDINGLY. IT WOULD BE HELPFUL IF FOREIGN INVESTORS PLEDGE THAT THEY WILL NOT MAKE ANY ATTEMPT TO INVITE FILIPINOS TO ACT AS NOMINEES FOR THEIR INTEREST. ON THE OTHER HAND, FILIPINOS MUST SUPPORT THEIR INVESTMENTS IN TERMS OF A RECORD OF EARNED INCOME AND WEALTH. UNQUOTE.

4. PROPOSED GOP POLICY STATEMENT DEFERRING ACTION ON LAND BEYOND JULY 3 WAS ALSO RECEIVED FROM ROMULO, BUT APPROACH IS NOT CONSISTENT WITH UNDERSTANDING BETWEEN PRESIDENT MARCOS AND THE AMBASSADOR. ARNOLD PRESENTLY ATTEMPTING OBTAIN REVISION IN TALK WITH PATERNO.

5. NOT RECEIVED WERE CONCEPTS FOR PRESIDENTIAL DECREE IN SERVICE CONTRACT AREA TO ALLOW USE OF PUBLIC LAND BY FOREIGN ENTERPRISES. ARNOLD ALSO DISCUSSING THIS SUBJECT FURTHER WITH PATERNO.

6. COMMENTS ON MATERIAL FOLLOW SEPTTEL.  
SULLIVAN

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